IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1773 of 1994

with

SPECIAL CIVIL APPLICATION No 6167 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GUJARAT STATE ROAD TRANSPORT

Versus

KHODSINH GOBARSINH MAKWANA SINCE DECEASED AND HIS HEIRS

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Appearance:

1. Special Civil Application No. 1773 of 1994
   MRS VASAVDATTA BHATT for the Petitioner.
   (MR HK RATHOD) for Respondent No. 1
   NOTICE SERVED for Respondent No. 1
   RULE SERVED for Respondent No. 1/1
2. Special Civil Application No. 6167 of 1994
   MR MUKESH H RATHOD for the Petitioner.
   MR MITUL K SHELAT for the respondent.

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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/11/2003

ORAL JUDGEMENT

1. Since both these petitions are filed against the order of the Labour Court passed in Reference (LCK) No.85 of 1987, both these Special Civil Applications are disposed of by this common order.

2. Originally, the S.T. Corporation filed Special Civil Application No.1773 of 1994 against the workman, viz., Khodasinh G. Makwana, but, unfortunately, he died during the pendency of the petitions and his heirs are already brought on record.

3. The concerned workman was working as a Driver in the S.T. Corporation. He was subjected to departmental proceedings on the charge of rash and negligent driving. It was alleged against him that while he was driving the S.T. bus, he killed one boy of about 9 years, as the boy was ran over by the aforesaid S.T. bus, which was driven by the driver in question. The accident in question occurred on 27.4.1983.

4. After the conclusion of the enquiry, the concerned workman was removed from service. The concerned workman thereafter raised an industrial dispute, which was referred to the Labour Court, Kalol, being Reference (LCK) No.85 of 1987. It has been found by the Labour Court in paragraph 11 of the Award that the main reason for the unfortunate accident is that the concerned child abruptly tried to cross the road. The Labour Court also found that the criminal court has given benefit of doubt to the said driver. The Labour Court, however, came to the conclusion that the concerned workman was not subjected to any misconduct of similar nature in the past, and ultimately, passed the order of reinstatement with 35% back wages, on his original post. The said order is challenged by the S.T. Corporation by filing Special Civil Application No.1773 of 1994.

5. The concerned workman had also challenged the order of the Labour Court, by which he was denied full back wages. The said petition is numbered as Special Civil Application No.6167 of 1994.

During the pendency of both these Special Civil Applications, the original workman died and his heirs are brought on record in both these Special Civil Applications.

6. On behalf of the S.T. Corporation, it is argued that the Labour Court should not have granted 35% back wages as the Labour Court itself has found that the concerned driver was also to an extent negligent, and if he was very vigilant, the accident could have been avoided.

Mr.Rathod, on the other hand, submitted that the driver was driving the bus on the Highway and that, suddenly, the child tried to cross the road and because of that, the unfortunate accident occurred. He submitted that, at least, the Labour Court should have granted 50% back wages for the intervening period.

7. At the time of admitting Special Civil Application No.1773 of 1994, this Court had stayed the order of back wages only. In that view of the matter, the workman was already reinstated by the S.T. Corporation on his original post, but, thereafter, he expired on 11.12.1994.

Considering the aforesaid aspect of the matter, now, the only question which requires consideration is whether the Labour Court has committed any error in granting 35% back wages to the concerned workman. Considering the fact that the concerned workman has already died and considering the fact that the Labour Court itself has found that the concerned workman himself was not solely responsible for the accident in question, and considering the fact that even in criminal court, he was acquitted by giving benefit of doubt, in my view, this is not a case in which the order of granting 35% back wages is required to be interfered with by this Court in its extraordinary jurisdiction under Article 227 of the Constitution of India. Considering the aforesaid aspect, I do not find any substance in any of these petitions. The Labour Court has used its discretion properly by not granting full back wages. Even that part of the order is not required to be interfered with by this Court.

8. Considering the aforesaid aspect of the matter, both these Special Civil Applications are required to be dismissed and they are accordingly dismissed. Rule is discharged. Interim relief is vacated. No costs.

9. If any amount is to be paid to the widow of the deceased workman as per the order of the Labour Court, the same may be paid on or before 31st January, 2004.

28th November, 2003 ( P.B. Majmudar, J. )

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(apj)